IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2231 OF 2005

Shri Dnyaneshwar Dhondi Mule & Ors. ..Petitioners.
Versus
Pandurang Sahakari Doodh Utpadak
Sanstha Ltd., Umbare (Page) & Ors. ..Respondents.

Mr. R.V. More for the petitioners.
Mr. Surel S. Shah for the respondents Nos. 1,2 & 4.
Mr. D.A.Patil, AGP for the respondent No.5.

CORAM : S. A. BOBDE, J.
DATED : 13TH OCTOBER, 2005.

P.C.:

1. Rule returnable forthwith. Mr. S.S.Shah for the respondents Nos. 1, 2 & 4 and Mr. Patil, AGP for respondent No.5 appear and waive service of rule. Heard by consent.

2. The petitioners have challenged the order dated 09.03.2005 passed by the Assistant Registrar, Co-operative Societies, by which the Assistant Registrar has adjourned the special meeting conveyed for considering the vote of no confidence against the respondent No.2. The meeting was requisitioned and conveyed on 09.03.2005 by the Assistant Registrar u/s. 73(1)(D) read with Rule 57(A). In the special general meeting it was proposed to pass a vote of no confidence against the respondent No.2 Anirudha Vithal

Mujmule, who is the Chairman of the respondent No.1.

3. It appears that the respondent No.4 approached the co-operative court, claiming that he was the member of the managing committee of the respondent No.1 Society, who has not been served with a notice of the meeting of no confidence. The respondent No.1 Society filed an affidavit and admitted that respondent No.4 is a director of the society. Therefore, the Co-opertive Court, Solapur by order dated 07.03.2005, restrained the society from prohibiting the respondent No.4 from acting as director / member of the opponent society till final disposal of the dispute. Admittedly, none of the petitioners who have moved notice of no confidence are parties to the dispute. They were thus dis-abled from questioning the status of respondent No.4 as a member of managing committee of the respondent No.1 Society.

4. On the date on which the meeting was convened i.e. on 9.3.2005, suddenly the Assistant Registrar Co-operative Societies, respondent No.3 herein, passed an order, observing that since the Co-operative Court, Solapur in dispute No. 192/2005, referred the above, has ordered that the respondent No.4 shall not be

restrained from acting as director of the society, that the meeting is not properly and legally convened since he has not been served with the notice of the special general meeting. This order is not passed in any proceeding but the Assistant Registrar seems to have acted on his own. I am of view that the impugned order is clearly illegal and unsustainable in view of the following :-

> Sub-section 5 of Section 73ID clearly provides as follows :-
>
> (5) The meeting called under this section shall not, for any reason, be adjourned.

5. The Assistant Registrar, who is empowered to preside over the meeting can only exercise the powers conferred under Rule 57A. Mr. Shah, the learned counsel for the respondents Nos. 1,2 and 4 submitted that the power to adjourn the meeting is traceable to Rule 57A, sub-rule 7 clause (g), which reads thus :-

> 57A. Motion of no-confidence against the officers of the society.- (1) .....
> .....
> .....

(7) The Registrar or the officer authorised to preside over the meeting shall, ---

(a) .....

.....

(g) declare the motion or motions as rejected and take a note to that effect with reasons in the minute book under the following circumstances, --

(i) if no member of the committee present,

(ii) none of the members of the committee, who are present refuse to sign the requisition,

(iii) 2/3rd members are not present at the commencement of the meeting (if 2/3rd is fraction, it shall be rounded to next higher number);

I cannot read any such power to adjourn such a meeting

in the aforesaid rule. In the circumstances, the impugned order which may have worked itself out in the sense of the date of the schedule meeting is over, deserves to be set aside since no confidence motion, which the petitioners are entitled to move, may also meet with the same fate.

6. Having regard to the circumstances, of the case, I see no merit in the submission of the respondents Nos. 1, 2 and 4. The order of the Assistant Registrar is not sustainable since it is completely without jurisdiction and passed without giving an opportunity of being heard to the aggrieved party. The Rule is made absolute in terms of prayer clause (c).

7. The petitioners are at liberty to take out such appropriate motion for no confidence in accordance with law.

DT.13.10.05 (S.A.BOBDE,J)

.....